

Subject: HB 5425 - Willington Board of Education

Dear Education Committee members:

Our board has been trying to do a better job of communicating the needs of local school systems with legislators. We're not very good at it yet, so we asked our legislator to introduce a bill without realizing that, not only is it too late to do so, but the measure was already included in another bill. I'm attaching our original correspondence asking for help, and encourage you to support the bill in question, HB 5425. I apologize we weren't aware of it in time to attend the hearing.

Special Education is becoming a very significant budget component, and frankly we believe the total cost is largely justified. What concerns us is whether it's being spent correctly. The current system, wherein a parent can allege flaws in the IEP/PPT process and it is nearly impossible for a school system to disprove them, has allowed nearly any parent with expensive legal representation to self-diagnose their child and prescribe treatment. The school system, which runs the risk of reimbursing their litigation costs, acquiesces to scores of totally unjustified demands. This leaves insufficient funding for the needs of the truly deserving special education students. The fact is, money is not unlimited. No system which allocates special education resources to students who don't require them is victimless. Every time the current system causes a school system to buckle to a groundless demand another special education student is hurt. As budgets become tighter over the next few years, this problem will get worse. The current system is effectively allocating an undue portion of services on the basis of the size of a parent's legal budget, which is exactly the opposite of its intent.

In our opinion, HB 5425 is not anti-special education, very much the opposite. It would allow the legal system, in cases where agreement is not reached earlier, to determine the appropriate needs of special education students and the obligations of school districts. To believe it wouldn't is to essentially believe that all other states, the federal government, the Supreme Court, and the entire IEP/PPT process are entirely wrong. If that's the case, we should be working on those systems, not allowing them to continue failing and attempting to nullify them by capping them with what is essentially a court system with pre-determined outcomes.

We know you are very busy, and hear many competing claims. If any of you has the time, I would very much appreciate the opportunity to discuss this issue with you. I would be happy to come to meet you, to correspond by email, or to talk on the phone. My numbers are:

cell 860 335 2132
work 860 684 4470
home 860 684 9783

Please do consider this issue carefully, it has not been well publicized and what may seem like a lack of interest or support to you may actually be a sign of low awareness. If you poll the school districts in your area, I think you will find an awful lot of support. This legislation is good for schools and children, and wouldn't impact the state budget. It's hard to imagine passing that up in times like these.

Thank you,

Mark Makuch, Chairman
Willington Board of Education

WILLINGTON PUBLIC SCHOOLS

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March 9, 2010

Rep. Bryan Hurlburt
Legislative Office Building, Room 4062
Hartford, CT 06106-1591

Representative Hurlburt:

At the recent meeting of our town's elected officers you asked us what specific state laws might affect the current special education environment. We've discussed the issue amongst ourselves, with the administration, and with our attorney. We feel the most significant issue the Connecticut legislature could address is the "burden of proof" standard, described in part by this excerpt from a report of the Connecticut Office of Legislative Research:

In 2005, the U. S. Supreme Court held that, because federal law was silent on the issue, the standard legal default rule that the plaintiffs in a case bear the burden of proving their claims should apply. Thus, it ruled that "the burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief" (*Schaffer v. Weast*, 446 U. S. 49, November 14, 2005)....

Connecticut's special education burden of proof requirement is different from the one determined by the Supreme Court ruling. In all cases, Connecticut requires the school district or other public agency responsible for providing special education to prove its placement or program appropriate. This rule applies even when the parent requests the due process hearing.

Connecticut's burden of proof requirement is not part of the special education due process statute (CGS § 10-76h). Rather, it is SBE regulations that require that, "in all cases . . . the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency" (Conn. Agencies Regs. §10-76h-14).¹

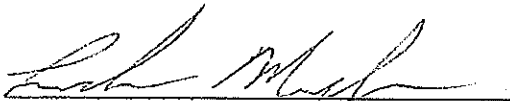

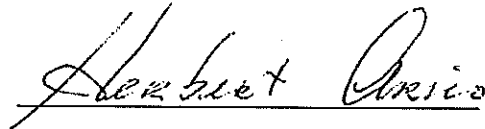
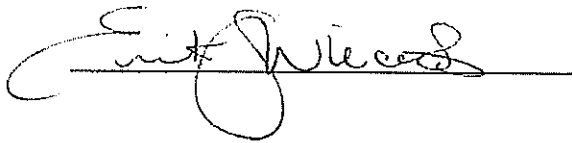
It appears from the OLR report that Connecticut law is silent on the issue and in the absence of guidance from the legislature the policy has come to differ significantly from the Supreme Court standard, in a way which leaves school systems in Connecticut at an unfair disadvantage. It also appears that legislation could be introduced to clarify the issue and align Connecticut with the Supreme Court standard and national practice.

It's our opinion that such legislation would enjoy widespread support and would, in fact, have the effect of easing the budget problems of every school district in the State without additional spending. It would leave the current system of hearings in place, so the rights of parents and children to a free appropriate public education would be unaffected.

School systems are non-profit, child centered organizations with experts in place. The effect of the current burden of proof standard on their ability is complex, and the statistics regarding special education hearings can be misleading without appropriate interpretation. We look forward to the chance to discuss them with you.

We believe it is immediately appropriate and within the purview of the legislature to correct this flaw in the current system by adopting legislation which aligns the State's burden of proof requirements with federal law and Supreme Court precedent, and we ask that you and Senator Guglielmo initiate the process.

Sincerely,
THE WILLINGTON CONNECTICUT BOARD OF EDUCATION



cc: Senator Anthony Guglielmo